

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

THURMAN HARVEY HINES, )  
                            )  
                            )  
Plaintiff,              )  
                            )  
                            )  
v.                         )          **Case No. CIV-07-197-R**  
                            )  
                            )  
STATE OF OKLAHOMA, et al., )  
                            )  
                            )  
Defendants.             )

**ORDER**

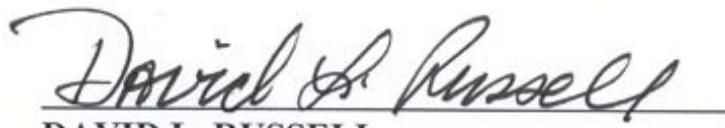
Before the Court are the Report and Recommendation of United States Magistrate Judge Bana Roberts entered July 21, 2008 [Doc. No. 43] and Plaintiff's objection to the Report and Recommendation filed August 11, 2008 [Doc. No. 45]. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court reviews the Report and Recommendation *de novo* in light of Plaintiff's Objection.

The Court has carefully considered Plaintiff's arguments in support of his objection, including, *inter alia*, that Defendants have acted in bad faith and acted to obstruct justice because they knew when the Special Report was due and when their answers and/or motions were due. The Court is not persuaded. As the Magistrate Judge pointed out, no employees of the DOC legal department or of the Attorney General's office was advised of the lawsuit or the apparent waivers. Report and Recommendation at p. 3. The Court agrees with the Magistrate Judge that the failures to file a Special Report and answers/motions to Plaintiff's amended complaint were a result of excusable neglect and/or mistake and not of any bad

faith or deliberate refusal to respond, *see* Report and Recommendation at pp. 3 & 4, and that justice is better served by a resolution of a case on its merits. *Id.* at p. 5.

Accordingly, the Report and Recommendation [Doc. No. 43] is ADOPTED in its entirety, Plaintiff's motion for default judgment [Doc. No. 31] is DENIED and Plaintiff's motion for an extension of time to file a Special Report, respond to the amended complaint and respond to Plaintiff's motion for summary judgment is GRANTED. The special report shall be filed on or before September 10, 2008; Defendants' answers and/or motions directed to Plaintiff's amended complaint shall be filed on or before September 2, 2008; and Defendants' response(s) to Plaintiff's motion for summary judgment shall be due on or before September 16, 2008. This matter is re-referred to United States Magistrate Judge Bana Roberts for further proceedings consistent with the original order of referral.

IT IS SO ORDERED this 13th day of August, 2008.



DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE